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ABSTRACT

If the supply of day care is ever to keep pace with the rapidly rising demand, it is essential that there be a favorable climate for its growth. At present there is not, and the regulatory obstacle course laid out by state and local officials is in large part why. State barriers to the provision of day care involve licensing and registration and staff/child ratios, whereas local barriers to the expansion of family day care concern zoning regulations and building, fire, and health regulations. Local barriers to the expansion of day care centers also exist. Regulations to prevent child abuse in day care settings may deter dedicated and caring individuals from entering the day care market. The deregulation of child care can begin with registration and parental supervision, the dismantling of local regulatory barriers, and the implementation of private sector alternatives to state oversight. Without the false sense of security provided by government standards, parents would take more responsibility for the well-being of their children. Moreover, through unregulated competition, day care facilities and services can supply parents with something even more fundamental - freedom of choice. (RH)

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DAY-CARE REGULATION: SERVING CHILDREN OR BUREAUCRATS?

by Karen Lehrman and Jana Pace

The regulation of day care is 100 years old this year.[1] In the past 15 to 20 years, however, day-care regulation has come to consume $47 million of taxpayers' money.[2] Today, all 50 states and the District of Columbia have some day-care regulations. More significant, day-care facilities are also subject to a host of local zoning, building, health, fire, and safety statutes. These regulations, which vary from state to state and municipality to municipality, can dictate everything from the time a facility opens to the width of the exit door. The intent of these regulations is to ensure minimum health and safety standards for the children and to guarantee responsible care by the day-care provider. Unfortunately, many requirements do little to achieve these aims, while a major effect of regulation has been to raise the cost of day-care services, driving providers underground and limiting the number of children who can benefit. Unnecessary regulations are stifling the supply of day care at a time when the need has never been greater and shows every sign of continuing to surge.

The Growing Demand for Day Care

Once considered an unfortunate necessity for single mothers, day care has become an American institution, used by people of all economic, cultural, and educational backgrounds. This phenomenon is the inexorable result of social and demographic changes that over the past 20 years have altered the life-style and composition of the American family.[3] No longer are most children raised in traditional, two-parent households, with a father who works and a mother who stays at home: in 1984, both parents held jobs in 52 percent of American families. At the same time, the traditional form of day care provided by relatives and friends is vanishing; not only has the increased mobility of American society led to the disappearance of extended families, but the conventional babysitters have themselves joined the work force.

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Yet the availability of day-care services has not kept pace with demand. While there are an estimated 10 million day-care spaces available nationwide, there are at least 14 million preschoolers whose parents work full time, according to the Institute for Parent/Child Services in Philadelphia. And that figure is expected to increase 38 percent by the decade's end. The need for infant care is particularly pressing, since 47 percent of women with children under one year of age are now in the labor force. According to a day-care referral service in California, 40 percent of its requests are for children under two, while only 13.5 percent of the licensed day-care spaces available locally are for this age group.[4] Another study found that in 1982 more than 17 percent of parents searching for day care were not able to find it.[5] Such failure does not necessarily mean that parents forfeit job or education opportunities; rather, it means that young children are often left alone for at least part of the day.[6]

Whether children are better cared for at home by their own mothers, in others' homes, or in day-care centers is not a policy question. Day care has become a necessity for most families and should thus be regarded as an essential community service. The question is whether current policy is working to cultivate or suffocate this much-needed resource.

The Shortage of Supply Services

Why is there a shortage of day-care services? One reason is general: there is usually a lag in any market before supply catches up with demand. Another, more specific, reason is that day care has not proven a particularly lucrative venture, at least not for the 1.5 million people who provide day care in their homes. According to the Child Care Law Center in California, the economic realities of "family" day care are these:

> The average fee per child per month for full time care in a large family day-care home is $150 to $200 per month. If there are 12 children (and it is rare for any program to be constantly full due to parents' vacations, delays in replacing a child, collection problems, etc.), the total gross annual income would be $21,000 to $28,000. Out of this amount, two full-time salaries and benefits must be paid and expenses must be met, including liability insurance, food for snacks and lunch, equipment, supplies and so forth.[7]

More typically, a provider cares for only three or four children full time, earning less than $6,500 a year.[8] Another survey estimates that a family day-care provider earns an aver-

age of $74 a week in profit.[9] For this, most day-care providers are required to put in an 11-hour day--from 7:00 a.m. to 6:00 p.m.--to accommodate the schedules of working parents.

The other major type of day-care service, the day-care center, usually serves 20 or more children and is run either as a commercial enterprise or as a nonprofit activity of a church or school. Centers charge higher fees, and the commercial ones can actually be profitable. But they also tend to price themselves out of the reach of lower- and middle-income families who typically spend more than 10 percent of their after-tax income on day care.[10] Home care remains the most important for such families, and it is here that the need is greatest.

Of course, home providers do not enter the day-care market as entrepreneurs seeking to get rich. Most are in the business because they like children. Many are mothers themselves who have chosen to stay home with their own children and supplement their families' incomes (or actually support their families) by caring for the children of people who work outside the home. Added expenses or bureaucratic red tape can easily tip the balance for home providers, turning a marginally profitable but rewarding endeavor into a frustrating and expensive one.

Clearly, then, if the supply of day care is ever to keep pace with the rapidly rising demand, it is essential that there be a favorable climate for its growth. At present there is not, and the regulatory obstacle course laid out by state and local officials is in large part why.

State Barriers to the Provision of Day Care

Licensing and Registration

The primary regulation of day care occurs at the state level, where standards are set and licenses are granted.[11] All states require day-care centers to be licensed, and more than half require day-care homes to be licensed as well. In some states, if a person cares for even one unrelated child in a private residence other than the child's own, that person is considered to be operating a day-care facility and is required to obtain a license.

To monitor compliance, day-care facilities are inspected by state licensing officials (usually with the department of social or human services) upon application for a license and, in most states, again each time a license is renewed. Several states only conduct spot checks on a random sampling of licensed family homes.

In response to tightening budgets, some states have replaced the licensing of day-care homes with "registration," generally considered to be a mild form of regulation. Registration often does not require inspection by the state, emphasizing instead the participation of parents in monitoring the care of their children. In some states, registration is even voluntary.

Currently, 11 states register family day-care homes, and 3 either license or register them, depending on the number of children enrolled and the presence of children receiving federal subsidies. Five states regulate only those homes that receive federal funds.[12] Home providers caring for fewer than five children are exempt from regulation in 19 states, while 23 others set more relaxed standards for providers who care for fewer than six or seven children in their homes. These states have a separate classification for large family day-care or "group" care facilities. In states without such a category, homes where more than five or six children are cared for are usually defined as day-care "centers" and are therefore subject to more rigorous standards.

State standards generally govern the number and ages of children that can be cared for. In a day-care home the most common maximum number is six, of which no more than two can be infants. State standards also regulate the amount of indoor and outdoor space provided, the quality of meals and snacks, program content, parental involvement, and so on. In addition, regulations for large family homes and day-care centers usually include standards on educational requirements for center directors and teachers and on the ratio of staff to children.

Staff-Child Ratios

Of all the state regulations, staff-child ratios have the most direct bearing on the supply of day care. Virtually all states have regulations limiting the number of children one staff member can care for in a day-care center. The most common staff-child ratios for preschoolers are 1:10 and 1:15. Since staff salaries comprise one of the largest components of a center's costs--about 75 percent--low staff-child ratios limit the number of children that can be cared for in centers with limited budgets. The 1979 National Day-Care Study commissioned by the Department of Health, Education, and Welfare, the only study that has examined the effect of state standards on quality of care, confirmed that the staff-child ratio was the most important determinant of providers' costs. Moreover, the study found only a "slight" correlation between staff-child ratios and quality.[13]

Some states currently require centers to maintain a 1:3 ratio for infant care. Ann Muscari, a spokesperson for Kinder-Care, by far the largest chain of day-care centers, says that such a low ratio is not always necessary in a well-equipped center. It is, in part, such costly regulations that have kept Kinder-Care--which opened its 1,000th center this summer--out of 10 states. According to Muscari, in addition to weighing the demand for day care and the real estate costs in a potential market, Kinder-Care "tends to go where regulations are such that [the company] can make a reasonable profit, while providing affordable and quality child care." The "very, very stringent" regulation in New York is a principal reason for not opening a center in that state. The staff-child ratio for three-year-olds in New York is 1:7.[14]

Strict standards of this nature also limit the number of children able to benefit from a day-care facility receiving federal funds for children from low-income families. Fifteen states have different standards--generally more stringent--for subsidized care, according to Helen Blank of the Children's Defense Fund. In seven states, family day-care homes are subject to a more stringent regulatory process if they accept subsidized children.[15]

Local Barriers to the Expansion of Family Day Care

Zoning Regulations

Although the state's formal permission to operate is the fundamental requirement for most providers of family day care, complying with state standards usually does not prove as costly or complicated as getting past local regulatory obstacles. The highest hurdle facing family providers is often the first--obtaining the approval of local zoning officals. Of all local day-care regulations, however, zoning statutes have the least relevance to the quality of care and the safety of the children. Most city zoning commissions consider day care to be a small business and prohibit programs from opening in residential areas. This prohibition extends even to individuals wishing to use their own homes to care for a few neighborhood children.

The illogic of this restrictive zoning policy was pointed out by one frustrated would-be provider before the Washington, D.C., Board of Zoning Adjustment: "You're telling us that we cannot operate a day-care facility in a residentially zoned, middle-class neighborhood with a large number of working mothers, but we can operate a center in a commercial zone between two topless bars."[16]

In most cases providers can apply for a zoning variance or a conditional-use permit, but the process is generally neither cheap nor easy--nor is it always successful. Fees to process an application for a variance or a use permit typically range from $100 to $1,000, although zoning commissions that are particularly vehement in their desire to keep day care out of residential areas have been known to levy fees as high as $3,000.[17] Before a use permit is granted, some communities also require complex, formal hearings in which applicants may need legal counsel, a further--and not inconsequential--expense. An applicant may also be required to send a written notice of the hearing to neighbors as well as to pay for a public notice in the local newspaper.[18]

The detrimental effects of zoning regulations can be illustrated easily. Mary Andrews of Ridley Township, Pennsylvania, tried to claim exemption from the local zoning code on the grounds that her day-care service was a "home occupation." But the zoning board ruled that her home was in violation of the local ordinance because she had an additional part-time employee and took her business outside the home when she let the children play in her yard or took them on walks. At a later hearing, she testified that the employee had resigned and that the children would remain inside in the future.[19] Rather than promoting quality or ensuring safety, the effect of the local ruling was to reduce the amount of adult supervision and deny children outdoor exercise.

Five prospective day-care providers in Richland County, South Carolina, were denied outright the conditional-use permits necessary to provide day care in their homes. The applicants were participants in the state's Family Day-Care Home Demonstration Project, a government-funded program to train AFDC recipients to provide day care. Each had passed a preliminary screening by the state's Department of Social Services and had completed a three-month training program. According to Lillian Crosby of the Management Services Corporation, the private organization that runs the program jointly with the state, zoning had not been a problem in other counties. In Richland, however, because neighbors and members of the zoning board of adjustment were opposed to day care, the requisite permits were withheld and there was little to no chance of successful appeal.[20]

In one exceptional case of zoning trouble in Birmingham, Michigan, a provider was arrested for caring for too many children in her home. Although Renee Cuchetti had a license from the state to care for up to twelve children, under Birmingham's zoning ordinance she could accept only six. Cuchetti had previously complied with this limit, but in 1982 when her husband became unemployed, she began caring for one or two

additional children with his help. Her problems began when a neighbor, who had tried to have Cuchetti day-care business closed down once before, enlisted the aid of two other neighbors to count the cars arriving at the Cuchetti home each day. Based on this "triple hearsay," says Patrick Keenan, Cuchetti's lawyer and a professor at the University of Detroit Law School, the city issued an arrest warrant for the errant day-care provider.

The case was ultimately dismissed by embarrassed local officials, and Cuchetti continues to provide day care. She says she will not try to get the local zoning policy brought into line with state policy, even though in 1980 she had led the successful fight to change the city's zoning law to permit care for up to six children per day-care home in residential areas. The court battle had taken over a year and had cost the Cuchettis $3,000 to $4,000 in legal fees.[21]

Opposition from neighbors is frequently the point of origin for the problems home providers encounter with local zoning authorities. Much of the resistance to day care, explains Abby Cohen, a lawyer with the Child Care Law Center, comes from retired senior citizens who fear that a day-care home would mean traffic congestion and an influx of noisy children into their quiet residential streets. While some additional traffic in the morning and evening is likely, she argues that the level is usually not high enough to justify prohibiting family day care. The Child Care Law Center advises prospective providers to arm themselves with these arguments when appearing at zoning hearings:

> Even a home caring for 12 children will probably generate little increase in traffic because most families select day-care homes in their own neighborhoods and many school-age children walk from school to day care. Those parents who do drive won't all arrive at the same time, so parking shouldn't be a problem.
>
> The children in family day care are well-supervised. . . . They are less noisy than unattended neighborhood children, and their outdoor activities can be scheduled and controlled by the provider so that they do not create problems for neighbors.[22]

From attending numerous zoning-board hearings, Cohen has also found that a conviction that mothers should not work, but stay home to care for their children, is another source of neighborhood resistance to day care.

Local zoning commissions do not always act as fair, objective arbiters in such instances. Zoning hearings sometimes turn into forums for the airing of neighborhood tensions unrelated to the issue of child care, and, says Cohen, such neighborhood squabbling has often led to arbitrary zoning decisions.[23]

A case in point is Jorgenson v. Salt Lake City, now before the Utah Supreme Court, in which a day-care provider who was ordered to close down has charged the city's zoning board of adjustment with "arbitrary, capricious, and abusive" use of discretion. The zoning board allegedly made no attempt to discriminate among the neighbors who complained, assigning as much weight to complaints from neighbors living across the street and several houses away as to complaints from the neighbors whose property abuts the provider's. Moreover, the opinion of the lower court, which upheld the board's decision, was written in language suggesting that "if anyone in the city complained [about a day-care home], the zoning board would recognize that complaint" and deny the day-care home permission to operate, according to a lawyer involved in the case.[24]

While preparing a profile on day care for the American Enterprise Institute in 1982, Sean Scott talked to four proprietors of small day-care homes in Washington, D.C., who said they would not risk the $100 fee to participate in what they perceived to be an "arbitrary, inconsistent review process," and thus chose to remain unlicensed.[25]

The District of Columbia modified its zoning ordinance in 1982 to allow family day care to operate in residential areas as a matter of right. However, because the city defines family day care as a program serving five or fewer children, a home in which even six children are cared for (including the provider's own) is considered to be a "center" and is therefore denied this right.

A nationwide study conducted in 1984 by the Children's Foundation found that zoning problems for day-care homes have increased in recent years as more providers have entered the market. At the same time, progress has been made in eliminating restrictive zoning codes in six states, which have passed preemption statutes to exempt family day-care homes from local zoning ordinances. In these states, as in Washington, D.C., day care is treated as a "customary home occupancy" in the same way that doctors' and architects' offices are treated. Efforts to pass similar legislation in Massachusetts failed last year, and a preemptive statute that made it through the Georgia legislature was subsequently judged unconstitutional under state law.

Building, Fire, and Health Regulations

Like zoning codes, building, fire, and health codes applied to day care are administered primarily on the local level and vary widely from community to community. In cases where state licensing regulations conflict with local codes, the more restrictive provisions generally apply.

When interviewed, many providers say that a house or apartment deemed safe enough for a family should be considered suitable for the care of five or fewer unrelated children.[26] Yet this belief is rarely shared by local officials. A home judged safe by building and fire inspectors for private residents must usually meet a host of additional requirements if it is used for day care.

To comply with these codes, providers sometimes spend thousands of dollars to renovate their homes.[27] In some cases, the required renovations are either prohibitively expensive or, says Abby Cohen, actually impossible to implement. Cohen cites cases in which family day-care homes in California were required to install sprinkler systems and fire-retardant walls to comply with local fire codes. One family day-care provider was ordered to install fire-safe wallboard to separate the area used for day care from the rest of the house.[28]

California's preemptive day-care statute, adopted in 1983, has since freed small family day-care providers from such infeasible regulations. However, the statewide fire code for day care, which has replaced the local codes, still restricts day-care activities to the ground floor in homes caring for seven to twelve children unless automatic sprinkler systems are installed. Although a number of alternatives are allowed under the state regulation, "all are expensive," says the Child Care Law Center's Carole Stevenson. The regulation thus prevents many homes from expanding to provide group care.[29]

In other states as well, building and fire codes effectively prohibit family providers from increasing enrollment in their homes. In some cases, there is ample room to question whether the added safety provided by required renovations would be enough to justify the cost.

Sylvia Thorpe of Potomac, Maryland, for example, decided she could not afford to care for more children after the fire marshall told her she would need to replace her four smoke detectors with a five-detector, interconnecting system. The cost of installing the system was estimated at $2,000.[30] Susan Suddath, a family day-care provider for nearly 20 years in Damascus, Maryland, was told the ceiling in her basement was too low. Almost six feet tall herself, Suddath assured the inspector that she would be the tallest person in the room and did not need to stoop to stand there. Despite this, regulations, she was told, could not be bent.[31] A San Benito County, California, woman learned that she would have to install separate toilet facilities for boys and girls if she wanted to increase enrollment in her six-child day-care home. Moreover, the bathrooms would have to be accessible to wheelchairs. The woman withdrew her application.[32]

Regulations such as that stipulating separate toilet facilities have, in many cases, been borrowed from codes designed for institutions: schools serving larger numbers of children, or hospitals and orphanages providing round-the-clock care. "Because child care has only recently begun to be acknowledged as a necessary community service for all families," explains Carole Stevenson, "the laws that govern it . . . often do not contemplate its unique nature. In many instances, child care has been regulated by fitting it into a preexisting statutory scheme."[33]

According to David Beard, director of day-care licensing in Texas, "Legislators found it all too convenient to jam day-care licensing into existing residential child-care licensing laws, regardless of lack of fit."[34] In Texas, Beard adds, health departments often apply restaurant standards to day-care facilities because food is served. Family day-care providers can be required to install three separate stainless steel sinks and a vent over the stove.[35]

In Bloomington, Minnesota, health officials currently apply to large day-care homes the National Food Code provisions regarding the separation of public and private foods. Thus, in order to serve hot meals, these homes must be equipped with separate storage facilities (including refrigerators and freezers), separate food preparation areas, and a separate sink for hand washing where food is prepared.[36] Joy Prentice, a day-care provider in Bloomington, was also directed to obtain dish-sanitation equipment. Because she cares for more than five children, she is classified as a nursery school--requiring a fully commercial kitchen--under Bloomington's regulatory statutes. As a result, Prentice and most other group-home providers in Bloomington do not serve hot lunches; instead, they ask parents to provide brown-bag lunches. Providers who pay a $25 "snack fee" to the city, however, are permitted to serve cold snacks during the day. This is in addition to the $50 licensing fee that is levied by the city on group day-care homes.[37] Char Thomasson, executive director of the Family Day-Care Association in Hennepin County, Minnesota, claims that these costly requirements are a violation of the state's preemptive statute for day care, which covers both family and group day care.

When stringent standards are imposed on residences used for day care, providers are discouraged from applying for a state license and identifying themselves to local authorities. It is estimated that 90 percent of home day-care providers operate without a license, even where it is illegal to do so. Ten percent of the larger, more visible day-care centers are unlicensed.[38] The most frequently cited reason for "going underground" is the complex and costly maze of requirements that must be met before obtaining state sanction. For parents

seeking day care, this vast underground market can present a problem. When providers choose not to register or apply for a license, they do not appear on public or private information and referral lists. Even more visible (and uncountable) than the providers who go underground, however, are the potential providers who are deterred by state and local regulations from entering the day-care market at all.

Local Barriers to the Expansion of Day-Care Centers

Local regulations also present great obstacles to day-care centers. Some city zoning commissions do not define day care as a commercial activity and therefore prohibit facilities from locating in commercial areas. As a result, businesses may not be able to offer day care as an employee benefit on or near their premises without obtaining special approval.[39]

Under many zoning codes, churches are defined as essential community services permitted to locate anywhere. But when churches provide services other than worship--such as day care--they must often obtain a zoning variance or a special exception.[40] Some local governments also subject churches to additional requirements when their facilities are used for day care. In the District of Columbia, churches are required to have 60 square feet of playground space per child and reserved parking spaces for day-care staff. It is estimated that such requirements add $50 to $100 per child per month to tuition cost.[41] Across the District's border in Montgomery County, Maryland, the building code requires all day-care centers to have 1,000 square feet of playground space per child! Maryland's state licensing law stipulates only that "ample space" be provided.

Many building codes are predicated on the assumption that facilities have been newly constructed for the express purpose of providing day care. But that is rarely the case. Most day-care centers and virtually all day-care homes are located in structures formerly used for some other purpose. One director in Washington, D.C., wanted to open a center in a building that had a 36-inch-wide door. But the city required that doors in day-care centers be at least 38 inches wide. In order to comply, a wall had to be knocked out. In terms of actual inches and added safety, the difference between a 36-inch door and a 38-inch door is minimal. In terms of expense, it is not.[42]

The District of Columbia's regulations require centers to have one toilet for every 10 persons, including staff. Moreover, adult bathroom facilities must be separate from those of children. To meet this requirement, probably another holdover from regulations governing the care of children in orphanages,

hospitals, and other residential institutions, centers must either restrict enrollment or increase tuition. A less stringent ratio would be adequate to meet the sanitary requirements of children in day care.[43]

Regulation to Prevent Child Abuse

Investigations and arrests in New York, California, New Jersey, Illinois, Alabama, and Tennessee have focused national attention on the potential problems of sexual abuse in day-care settings. Concern, of course, is well justified. However, not only could a flood of new state legislation prove inadequate in preventing child abuse, it could deter dedicated and caring individuals from entering the day-care market. Added to these risks are the costs to day-care providers in time and money, and the potential threat to civil liberties.

Currently, the federal government is putting pressure on the states to pass child-abuse legislation. As part of the Continuing Appropriations Act for fiscal year 1985, Congress made available to the states $25 million for training child-care workers to prevent child abuse in licensed and registered day-care facilities. Use of these funds is contingent on a state's establishment of laws or regulations providing for employment-history checks, background checks, and nationwide criminal-record checks for all day-care employees. Previously, state laws regarding the confidentiality of criminal-record files prohibited day-care center directors from making criminal-background checks of potential employees. Any state that does not have the required legislation in place by September 30, 1985, must return half the allotted funds. At the time the federal act took effect, only three states had approved statutes requiring national criminal-record checks of day-care personnel, and fewer than half had regulations requiring screening through statewide criminal-record files.[44]

As part of the same act, Congress directed the Department of Health and Human Services (HHS) to provide the states with guidelines for minimum licensing and registration standards. Along with the guidelines, which were promulgated in January, 1985, HHS issued a statement on the potential effectiveness of screening:

> Experience to date indicates that criminal record checks for licensing and employment purposes in various occupational categories yield a positive identification rate (i.e., the person being checked has a criminal record) of only five to eight percent of the persons screened. Because child sexual abuse so frequently goes undetected and because the conviction

> rate for sexual abuse crimes is so low, it is estimated that only one to 15 percent of sexual abusers have criminal records. In addition, while approximately 95 percent of child-care workers are female, it is males who constitute 80 to 85 percent of the criminal record cases and 78 to 92 percent of child sexual abuse cases. It is estimated that only seven to eight percent of reported child sexual abuse is committed by someone other than a relative. It appears likely, therefore, that only a small number of child sexual abusers will be identified in this type of screening of child-care workers.[45]

HHS also noted that while the increase in the reporting of child abuse is a legitimate cause for concern, it may not mean that sexual abuse in day-care facilities is actually on the rise.[46] It is plausible that increased attention may have led to increased reporting.

In May 1985, HHS released a report on child neglect and abuse that stated that in almost 98 percent of known cases, children are abused in the home by close relatives, family friends, or neighbors. The single largest group of abusers, comprising 77 percent of the total, is parents [47]. A 1982 survey by the American Humane Association supports these findings. The survey found that in 56,000 cases of reported child abuse, the vast majority--82 percent--involved abuse by family members. Day-care workers and babysitters were involved in only 1.5 percent.[48]

In the wake of a much-publicized child-abuse scandal in a Bronx day-care center, New York City passed legislation in 1984 requiring all day-care workers to be fingerprinted. Of the more than 6,000 workers screened, not one was found to have a record of sexual or other child abuse. Only 3.8 percent had records of criminal convictions, and less than half of one percent had records of felonies. Nevertheless, 36 workers with criminal records were dismissed or suspended, even though many had been charged only with very old or drug-related offenses. This action was even harsher than it might seem, for in many cases police records report only the original charge, with no indication of whether an arrest was followed by dismissal, acquittal, or conviction.[49]

The costs of criminal-record checks may not be insignificant for day-care operators, and the processing time may be more than providers can afford. The FBI charges $12 for each fingerprint card submitted for nationwide screening. The state and local fees vary; for example, Nebraska charges $5, California charges $15.50, and New York City charges $17. A report by the inspector general's office of HHS estimates that

a nationwide criminal-record check of both state and FBI files using two fingerprint cards costs about $25 per person. The FBI estimates that it takes an average of 14 days for a fingerprint check to be processed, while state checks can take as much as six to eight weeks. These are long delays for day-care facilities, especially since the day-care industry suffers from a staff turnover rate of 40 percent and must be able to make replacements quickly both to assure adequate care and to meet state staff-child ratio requirements. In addition, while criminal checks can deter job applications by potential abusers, they can also discourage perfectly acceptable individuals from entering the day-care market, particularly when the checks require long delays before employment. "Ultimately," states the HHS report, "the costs of regulating will be borne by the consumer or the taxpayer."[50]

Another counterproductive effect of regulation to discourage child abuse in day-care centers is the false sense of security it can give parents. Most state agencies do not have the money or manpower to ensure that day-care regulations are being complied with, let alone to test their effectiveness in bringing about quality and safety. On the average, states have only one inspector for every 70 day-care centers; Ohio has one inspector for every 100 centers.[51] Because of these limited resources, states inspect homes only once a year or less. In California, day-care centers and homes are now being visited only once every three years. Some states inspect only a random 10 or 20 percent sample each year.[52] Family day-care homes are especially difficult to monitor, since only 140,000 of the estimated 1.5 to 2 million homes are licensed or registered.

Furthermore, in most states inspections of centers and homes are announced. Not only do scheduled visits rarely, if ever, detect cases of child abuse, but according to a 1985 Children's Defense Fund study, "Day-care centers that bend or break regulations have time to make the necessary improvements to be in compliance for the visitation. . . . The illegal practices often resume after the inspector leaves."[53] Scheduled inspection visits are more efficient for day-care licensing offices than unscheduled visits, however: since there are so few inspectors but so many facilities to visit, inspectors want to assure access to all important personnel and records.[54]

If licensing is to guarantee quality and safety, according to Joan Maxwell, senior associate with the Greater Washington Research Center, inspections must be much more frequent, even weekly--"a level of in-home supervision few providers would tolerate and few, if any, governments could afford. . . . Parents vest that licensing process with powers far beyond its merits. Most parents are unaware how rarely officials come into contact with licensed providers. The fact that a home--or

center--is licensed lulls many parents into a false sense of security. We have certainly seen evidence of this in the recent newspaper accounts of long-term child abuse by day-care providers, all of whom were licensed."[55]

Toward Deregulation of Child Care

Registration and Parental Supervision

By increasing providers' costs, day-care regulations limit the supply of a much-needed service. Many regulations, especially local zoning and building codes, do little to promote quality or ensure safety. Even in cases where regulations might benefit the child's welfare, limited enforcement minimizes any positive effect. For these reasons, states should replace licensing laws with a system of registration for both homes and centers. Registration requirements should include only those that have a proven effect on quality of care and on health and safety and are not so costly that they would cause providers not to operate or to operate illegally. At the same time, states and child-advocacy groups should continually reassess standards to determine which ones serve children best in the context of providers and parents' willingness and ability to pay.

Unlike licensing, registration would give parents the ultimate responsibility for the quality of their children's day care. This is appropriate: since they come into contact with the day-care staff and observe the facility at least twice a day, parents are in the best position to monitor day-care homes and centers effectively. Complaints by parents can then form the basis for official action, including unannounced inspections by state and local authorities. In some states, day-care providers are permitted to restrict parental visitation; this, obviously must be changed.

So far, states have done little to educate parents to be informed consumers of day-care services.[56] "The traditional licensing approach seems to take the family out of family day care," says David Beard, who has been in the business for nearly 20 years. He says parents can do a good job of overseeing family day care if they know what to look for.[57] According to Greater Washington Research Center associate Joan Maxwell, licensing officials perceive parents as either not knowing or not caring about the potential dangers that arise when children are placed in day care.[58] Such might indeed be the case. A 1983 study found that "parents tend to inquire about costs and form a general impression from the appearance of the center; few ask about the program and teacher qualifications."[59] If parental monitoring is to work, parents must take the trouble to learn

what good-quality day care is and, especially, how to recognize signs of child abuse and neglect. Until they do, regulations--especially those with only indirect bearing on day-care quality--can do little to ensure good day care. Parents often get a false sense of security from the mere existence of government standards regulating day care--even if those standards are not enforced through frequent inspections. When this happens, regulations not only fail to promote the welfare of children; they jeopardize it.

In the past decade, information and referral services have appeared across the country, partly filling the gap in parental education. These services, provided by state and local agencies, community organizations, employers, and nonprofit groups, increase parents' ability to choose the appropriate care for their children. Many provide information, training, and coordination of available child-care services; many refer parents to subsidized care and explain eligibility requirements; many identify providers who speak languages other than English, who accept infants, who offer evening or night care, and so on. Some even follow up on referrals to see if parents have found satisfactory child care, a service that helps identify geographic areas where additional providers are needed. Some information and referral services also screen day-care programs for quality and safety before adding them to resource lists.

Dismantling Local Regulatory Barriers

Another part of the deregulation process should address the barriers presented by local zoning, building, health, and safety codes. With working-women and single-parent households now an indisputable fact of American life, family day care has become an essential community service and should be viewed as such by local governments. The concerns of neighborhood groups need not result in expensive zoning variance procedures; rather, neighbors' rights can be addressed through reasonable compromises or, if necessary, through legal action against individual providers.

State preemption codes, which exempt day-care homes from restrictive zoning, building, and fire regulations, should be adopted more widely. States also need to address the concerns of group day-care homes. Statewide safety standards should take into account the fact that day-care programs are usually established in existing buildings. Alterations of existing structures should be required only when they are deemed so essential to child health and safety that their cost is justifiable. A home that local inspectors consider safe for a family should not have to meet any additional requirements to be considered safe for six or fewer unrelated children.

Private Alternatives to State Oversight

A number of private-sector services have taken on the accreditation of day-care facilities and the certification of day-care providers and their staffs. Although most of these initiatives are still in their infancy, it is conceivable that an expanded private role in setting standards and monitoring day-care services could eventually take the place of state oversight of day care. Since private certification and accreditation of individual day-care programs would give parents the greatest degree of choice in selecting day care, the growth of such agencies is desirable.

One of the more important of the private initiatives, the Child Development Associate (CDA) National Credentialing Program, provides training in child care at more than 350 colleges and universities nationwide. Since 1971, nearly 13,000 child-care providers have received CDA certification. An increasing number of states have begun using these credentials to assess day-care staff qualifications. (The CDA program is not entirely private, however; it receives half of its funding from a federal grant.)

Another private initiative starting up in some areas is the "satellite system," which recruits and trains home providers, sets standards for care, and closely supervises programs. At present, satellite day-care systems must be licensed by state authorities and must operate according to state standards, though some develop their own standards as well. At least five states--California, Florida, Michigan, Texas, and Virginia--now have provisions for satellite systems.

My Other Mother's (MOM's), Inc., one such private nonprofit system, operates in Alexandria, Virginia, on a fee-for-service basis. MOM's oversees four family homes and operates two centers. The director of the organization, whose educational background is early childhood development, inspects facilities in the system at least once a month and often once a week. Providers are required to give parents monthly child-development reports.

A similar program in Clermont County, Ohio, is operated by the local YWCA. Family day-care homes are screened for quality and safety before being listed with the program's information and referral service. In addition, each provider must agree to regular, unannounced visits from the county welfare department and must attend training classes on nutrition, child development, and child abuse. Providers are also given meal and snack guidelines and are required to keep a record of their weekly menus. Incentives to join the YWCA program include liability insurance, unemployment insurance, Social Security, and two weeks of paid vacation after one year's employment.[60]

It is conceivable that such day-care programs as those sponsored by MOM's and the YWCA could operate effectively in the absence of a state licensing system. Money now spent by states on licensing could be better spent on the education of parents through information and referral services. In addition, a private program to certify day-care providers could be established on the model of the American Bar Association and funded through membership fees. However, certification from such an association should be optional, and parents should be able to choose whether or not to place their children in homes or centers with certified day-care providers.

As with many services, day care has been plagued by the ill-considered directives of well-intentioned bureaucrats. Laws designed to protect the health and safety of children and guarantee responsible care have, in many cases, proved to be counterproductive. By raising the cost of day-care services, would-be providers have been deterred from the business while others have been driven underground. This is aside from the fact that many of the requirements do little, if anything, for the welfare of children.

Indeed, it is vital that children be cared for by competent, dedicated professionals in a safe environment. But this quality of care has been achieved through parental concern, not ineffective and often counterproductive regulations. Without the false sense of security provided by government standards, parents would take more responsibility for the well-being of their children. Moreover, through unregulated competition, day-care facilities and services can supply parents with something even more fundamental--freedom of choice.

FOOTNOTES

[1] David Beard, "Regulation in Day Care: Overview and Alternatives," paper presented at conference "Child Care in the United States: Toward a National Consensus," sponsored by the National Center for Neighborhood Enterprise (Washington, September 1984), p. 3. In 1985, the Pennsylvania legislature passed what is generally considered to be the first complete child-care statute.

[2] Diane Adams, "Family Day Care Regulations: State Policies in Transition," Day Care Journal (Summer 1982): 13. A survey by Adams of state licensing agencies found an average estimated budget of $833,000 per state for day-care regulation and an estimated total of $47 million nationwide.

[3] Three major demographic changes account for the increased demand. First, the number of working mothers with preschool

children has more than doubled since 1960. In that year, 20 percent of all women with children aged six and under were in the work force; by 1984, the figure had soared to 52 percent. Second, the number of single-parent families has doubled in the past decade. One-parent families now account for 26 percent of all families with children under 18, compared with 13 percent in 1970. Third, the number of children under age 10 is growing for the first time in 30 years as the baby-boom generation begins raising families of its own. Between 1980 and 1990 the number of children under 10 is expected to increase 17 percent. Data obtained from Perspectives on Working Women: A Data Book, Bureau of Labor Statistics Bulletin no. 2080 (Washington: Department of Labor, 1980), table 26; Working Women and Public Policy, Bureau of Labor Statistics Report no. 710 (Washington: Department of Labor, August 1984), table 2; Household and Family Characteristics, Current Population Reports series P-20, no. 398 (Washington: Bureau of the Census, April 1985), table D. Families and Child Care: Improving the Options, House Select Committee on Children, Youth, and Families, 98th Cong., 2d sess., H. Rept. 39-1460, 1984, p. iv.

[4] Futures: Families, Community, and the Workplace 1, no. 1 (Pasadena: Child Care Information Service, January 1985), p. 3.

[5] Ibid. However, the National Association of Child Care Management (NACCM), a trade association representing some 300 day-care centers nationwide, reports that most members have spaces available, with occupancy rates averaging 70-75 percent. The discrepancy in these reports might be explained by cost constraints on parents looking for day care. In testimony before the House Select Committee on Children, Youth, and Families on April 4, 1984, Rachel Thompkins, executive director of the Children's Defense Fund, estimated the cost of care in a group home or center at $2,200 to $3,200 per year for a three- to five-year-old. Care for children under age three can run an additional $1,000 per year. The average cost for family day care, however, was estimated at $1,200 to $2,200 yearly. While a report by Gregory L. Rhodes and Mark Real of the Children's Defense Fund of Ohio (Day Care: Investing in Ohio's Children, Washington, 1985, p. 46) found that most families spend more than 10 percent of their gross incomes on day care, Edward Overstreet of the Michigan Association of Children's Alliances testified before the congressional committee on March 5, 1984, that families earning less than the Bureau of Labor Statistics intermediate budget could not afford to pay more than 5 percent of their incomes for day care. In 1981 the BLS intermediate budget was $25,407 for a family of four. Some parents also prefer the convenience and home-like atmosphere provided by family day-care homes to the more institutional atmosphere in centers, which serve an average of 94 children, according to NACCM figures.

[6] A report prepared for the governor of Maine by the Child Care Task Force revealed that 500 Maine children aged five or under spent time during a typical week caring for themselves. Another 2,500 children under age three and 1,000 children aged three to five were sometimes left at home alone, with only a neighbor or friend occasionally looking in on them. Helen White, Child Care: The States' Response (Washington: Children's Defense Fund, 1984), p. 10.

[7] Kathleen A. Murray, Summary of San Francisco and State Building Code Impediments to Licensure of Large Day Care Homes (San Francisco: Child Care Law Center, 1981), p. 2.

[8] Rhodes and Real, p. 46.

[9] Andree Brooks, "Child-Care Homes Divide Communities," New York Times, July 19, 1984, p. C8.

[10] Rhodes and Real, p. 46.

[11] From 1968 to 1982, the federal government regulated day care in facilities serving low-income, subsidized children. When funding was cut in the Omnibus Budget Reconciliation Act of 1981, responsibility for regulation passed to the state level. However, a bill introduced in the Senate in January 1985, the National Child Protection Act (S.142), would once again involve the federal government in setting standards for day-care programs. The bill would amend Title XX of the Social Security Act to require all states receiving Title XX funds to license and monitor day-care services according to standards to be established by the secretary of health and human services.

[12] 1983-84 Family Day Care Licensing Study (Washington: Children's Foundation, 1985), pp. 6-8.

[13] Children at the Center: Summary Findings and Policy Implications of the National Day Care Study (Cambridge, Mass.: Abt Associates, 1979), p. 3. At the time of the study, the prevalent staff-child ratios were 1:5 and 1:10. Since then, the majority of states have relaxed staff-child ratio requirements somewhat.

[14] Ann Muscari, phone interview, May 24, 1985.

[15] Helen Blank, phone interview, March 15, 1985.

[16] Robert L. Woodson, "The Importance of Neighborhood Organizations in Meeting Human Needs," in Meeting Human Needs: Toward a New Public Philosophy, ed. Jack A. Meyer (Washington: American Enterprise Institute, 1982), p. 142.

[17] Abby Cohen, phone interview, March 20, 1985.

[18] Lujuana Wolfe Treadwell, Zoning Laws and Family Day Care (San Francisco: Child Care Law Center, 1981), p. 1.

[19] Virginia Inman, "Day Care Laws Limit Private-Home Centers That Parents Like," Wall Street Journal, October 16, 1982, p. 18.

[20] Lillian Crosby, phone interview, April 30, 1985.

[21] Renee Cuchetti, phone interview, April 30, 1985; Patrick Keenan, phone interview, May 24, 1985.

[22] Treadwell, p. 8.

[23] Cohen.

[24] Michael Murphy, phone interview, May 1, 1985.

[25] Sean M. Scott, Regulatory Barriers to Neighborhood Development: The Regulation of Day Care (Washington: American Enterprise Institute, 1982), p. 6.

[26] Ibid., p. 10.

[27] According to Sean Scott, one day-care expert explained the added requirements placed on homes used for day care by noting that "most trained inspectors do not agree that the average home is safe for children. Few building inspectors are satisfied with the safety of those codes, but we could not afford the safety they would want to bring us. Therefore, when we give them a special responsibility to protect children in family day care, they could not sleep at night if they did not add on things that we do not have in our regular homes." Scott, pp. 10-11. Other individuals interviewed by the writers explained the stringent codes in similar ways.

[28] Cohen.

[29] Carole Stevenson, phone interview, April 29, 1985.

[30] Inman, p. 18.

[31] Ibid., p. 1.

[32] Ibid.

[33] Beard, p. 21.

[34] Woodson, p. 143.

[35] David Beard, phone interview, March 20, 1985.

[36] Char Thomasson, phone interview, May 2, 1985.

[37] Joy Prentice, phone interview, May 24, 1985.

[38] Adams, p. 9.

[39] Scott, p. 4.

[40] Ibid., p. 6.

[41] Robert L. Woodson, "Day Care," in This Way Up: The Local Official's Handbook for Privatization and Contracting Out, ed. Raymond Q. Armington and William D. Ellis (Chicago: Regnery Gateway, 1984), p. 159.

[42] Scott, p. 10.

[43] Ibid.

[44] Model Child Care Standards Act--Guidance to States to Prevent Child Abuse in Day Care Facilities (Washington: Department of Health and Human Services, 1985), p. 27.

[45] Ibid., p. 33.

[46] Ibid., p. 5.

[47] Parade, May 26, 1985, p. 16.

[48] Rhodes and Real, p. 76.

[49] Diana R. Gordon, "No Child Abuse, No Adult Abuse," New York Times, March 2, 1985.

[50] Model Child Care Standards Act, pp. 31-33.

[51] Rhodes and Real, p. 71.

[52] 1983-84 Family Day Care Licensing Study, pp. 15-17.

[53] Rhodes and Real, p. 71.

[54] Ibid.

[55] Joan Maxwell, "Paid-For Love: The Regulation of Small Family Day Care," paper presented at conference "Child Care in the United States: Toward a National Consensus," sponsored by the National Center for Neighborhood Enterprise (Washington, September 1984), p. 8.

[56] 1983-84 Family Day Care Licensing Study, p. 4.

[57] Inman, p. 18.

[58] Maxwell, p. 7.

[59] Susan Rose-Ackerman, "Unintended Consequences: Regulating the Quality of Subsidized Care," Journal of Policy Analysis and Management 3, no. 1 (1983): 24.

[60] Rhodes and Real, p. 12.

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